

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10488 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for the Petitioner.
Ms. Archana Rawal, ASSTT. GOVERNMENT PLEADER
for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 18/03/2004

ORAL JUDGEMENT

In this petition under Articles 226 and

227 of the Constitution, the petitioner has challenged the order passed by the Deputy Secretary, Urban Development Department in its revisional jurisdiction under Gujarat Municipalities Act, 1963. (hereinafter referred to as the "Act").

2. It was contended by the petitioner that an ex parte order was passed by the Director of Municipalities, Rajkot dated 2nd November, 1992 in pursuance of the notice issued under sections 260 and 237(2) of the Act. Being aggrieved by the said ex parte order passed by the Director of Municipalities, Rajkot, the petitioner preferred Revision Application being Revision Application no.12 of 1992 before the State Government. The said Revision Application was decided ex parte by the Deputy Secretary, Urban Development Department, State of Gujarat, respondent no.1 herein and hence both these orders deserve to be quashed and set aside. No other contention has been raised by the petitioner except that ex parte orders have been passed by both the authorities below.

3. The learned Assistant Government Pleader contended that a show cause notice was issued under sections 260 and 237(2) of the Act for excessive employment of daily rated workers employed by Una Nagarpalika which is de hors the provisions of the Act and without following due procedure laid down by law and more particularly in Government Circular no.UNPMC-1676/4091/P-1 dated 16th July, 1977.

4. It is also contended by the learned Assistant Government Pleader that the petitioner had employed several daily rated workers without giving any advertisement or without calling upon names from Employment Exchange. Neither interviews were taken nor any merit list was prepared. Similarly, sanction of General Board or Executive Committee of Nagarpalika has not been taken. The recruitment of daily rated workers is not in accordance with law and therefore, liability of the petitioner arises under section 70(2) of the Act.

5. It is also contended on behalf of the respondents that as per the resolution of the respondent no.1 bearing no. PMC/1076/4091/P/1 dated 16th July, 1977, the concerned municipality can employ 10% of total strength of the employees as daily rated workers. In the present case, 10% of the total employees of Nagarpalika comes to 14. Thus, at the most, after following due procedure, maximum 14 daily rated workers could have been appointed by the petitioner, whereas, in the instant

case, total 229 daily rated workers have been appointed by the petitioner without following any procedure like interviews, calling of names from Employment Exchange, preparing of merit list, obtaining sanction from the General Board or Executive of the Nagarpalika and without following the aforesaid circular dated 16th July, 1977 issued by the Government and therefore, notice under sections 260 and 237(2) of the Act was issued calling upon the petitioner that they are liable under section 70(2) of the Act.

6. It is also contended on behalf of the respondents that because of the aforesaid illegal appointments, unreasonably excessive and illegal appointments, the expenditure for the year 1991-92 came to the tune of Rs. 42,04,901/- which was to the tune of Rs. 28,87,240/ in the year 1990-91. This additional expenditure is only because of the conduct of the petitioner for which they are liable under section 70(2) of the Act. Upon issuance of the notice, a reply was filed by the petitioner. The matter was fixed for hearing on 19th October, 1992 by the respondent no. 2. The petitioner applied for adjournment because the President had gone out of station. Therefore, the hearing was fixed on 22nd October, 1992. On that day also, no one remained present on behalf of the petitioner. Hence, the order was passed.

It is also contended on behalf of the respondents that similarly in the Revision Application no.12 of 1992 preferred by the petitioner, hearing was fixed on 20th January 1993 and thereafter it was fixed on 23rd February, 1993. Hearing was also fixed thereafter on 19th March and 16th April, 1993. On 16th April, 1993, advocate for the appellant was present before the respondent no.1 and written submissions were also tendered to the respondent no.1. Thereafter, hearing was fixed on 6th May, 1993. Neither the petitioner nor his representative was present before the respondent no.1. Therefore, an order was passed in the Revision Application on 6th May, 1993.

7. Looking to the facts and circumstances of the case, it appears that the show cause notice issued under sections 260 and 237 of the Act refers unreasonably excessive employment of daily rated workers by the petitioner which was not only de hors the circular issued by the State Government, but also de hors the Act, whereby the expenditure has also increased from Rs. 28,87,240/- in the year 1990-91 to Rs. 42,04,901/- in the year 1991-92. The said employment is given by the

petitioner without following procedure, without giving any advertisement and without calling the names from Employment Exchange, without holding any interviews and without preparing merit list, which has resulted into the liability under section 70(2) of the Act. Enough opportunities were given by the respondent no. 2, on 19th October, 1992 and 22nd October, 1992. Reply was also filed by the petitioner and evidences were also produced. Therefore, it cannot be said that the order was an ex parte order. On merits, the petitioner has not been able to submit anything much more than the fact that the TP scheme nos. 1 and 2 were finalised and therefore, more number of workers were required for giving water connection. The said submission made on behalf of the petitioner is not tenable at law because the procedure as required under the law, is not followed by the petitioner for employment of daily rated workers.

8. Similarly, opportunities were given for hearing on 28th January, 1993; 23rd February, 1993; 19th March, 1993; 16th April, 1993 and on 6th May, 1993. On earlier dates, hearing had taken place and even written submissions were also tendered by the advocate of the applicant before the revisional authority.

9. Looking to the nature of the notice, facts of the case and the contentions raised on behalf of the respondents, it is not worthwhile to remand the matter to the respondent no.1 for rehearing. Both the orders passed at Annexures "A" and "B" are justified, legal, proper and equitable and were passed after giving enough opportunities to the petitioner. Hence, there is no substance in this petition and it fails. The petition is therefore, dismissed. Rule discharged with no order as to costs. Interim relief, if any, stands vacated.

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